IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.389 OF 2007
IN
SUIT NO.3872 OF 1993

M/s.Amarpratik Builders(I)
Pvt. Ltd & Anr. ..Plaintiffs

V/s.

Smt.Urmila Kanjibhai Patel & Ors. ...Defendants

Shri.Shailesh Shah i/b Pandya & Poonawala for Plaintiffs to show cause.
Shri.Rajan Kachore i/b M/s.A. Bharat and Co. for Defendant No.1(a) to 1(f) in support of notice of motion.

CORAM : S.A.BOBDE, J.
DATED : 13/02/2007

P.C.:-

1. This suit is for specific performance of contract for sale of land to the plaintiffs. This notice of motion is taken out by the defendants praying for permission to create third party rights or interest in the constructed portion i.e. first floor of the building standing on Plot No.A-19B, Veera Desai Road, Andheri(W), in favour of Tara Meera Education Trust, Mumbai, by way of Leave and License.

2. In the suit of specific performance of the contract, this court permitted original defendant No.1

to carry out construction on 1/3 undivided portion of the plot on its own risk and responsibility. This court further observed that if the suit is decreed, the defendant No.1 will be bound to give an option to the plaintiffs to accept the plot with the construction on it or after the construction has been removed by the defendant No.1 at its own expenses.

3. The earlier order passed by Justice Rane was carried out by the defendant No.1(a) to 1(f). The Division Bench of R.M.Lodha and D.G.Karnik JJ passed an order dated 14th November, 2005 permitting the defendants to apply to the learned motion Judge for permission to create third party right or interest in the constructed portion(factory shed) if the defendants get a firm proposal in that regard and the proposed third party undertakes to abide by the ultimate decree that may be passed in the suit. Hence this application.

4. The learned counsel for the defendant No.1 relied on what appears to be a firm offer made by Tara Meera Education Trust's Mumbai Maritime Training Institute to pay monthly compensation of Rs.70,000/- (Rupees Seventy Thousand Only) alongwith security

deposit of Rs.3,00,000/-(Rupees Three Lacs Only), interest free. The Trust has also agreed to abide by the final outcome of the suit.

5. Shri.Shah learned counsel for the plaintiffs submitted that the amount should be deposited in court and not paid to the defendants. There is no reason to accept this contention. The learned counsel however, submitted that the plaintiffs are willing to make an offer which is better than that of Tara Meera Education Trust. There is no offer alongwith an undertaking as contemplated by this court, to abide by the order of this court, before this court today.

6. In the circumstances, notice of motion is allowed in terms of prayer clause (a),(b) and (c) subject to third party filing undertaking to this court in terms of order of this court dated 14th November, 2005, within a period of two weeks.

(S.A.BOBDE, J.)